IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 308 of 2005

Date of Decision: 29-03-2007

Hem Raj Petitioner

Versus

Director Consolidation and others. Respondents.

Coram

Hon'ble Mr. Justice Deepak Gupta, J.
Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the petitioner : **Mr. Subhash Sharma, Advocate.**

For the respondent No. 1 : **Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Dy. Advocate General.**

Mr. Rakesh Jaswal, counsel for all Legal representatives of respondent No. 2, except LR Smt. Ghambri Devi.

Surinder Singh, J. (oral)

The petitioner in this petition has, inter alia, sought the following reliefs:

"(i) That the impugned order contained in Annexure-P3 dated November 17, 2004 may be quashed and set aside in the interest of justice.

(ii) That the petition filed by the petitioner under Section 54 of the Consolidation of Holdings Act may kindly be allowed".

Whether reporters of the Local papers are allowed to see the judgment?

We have heard the learned counsel for the parties and have gone through the record.

It is strenuously argued by Shri Subhash Sharma, learned counsel for the petitioner that old khasra number 24 was split into new khasra numbers viz 18, 19 min, 22, 23 and 25 min. The shares of the parties therein are not disputed but according to the learned counsel, the petitioner herein owns half of the total land comprised in old khasra number 24 but mischief was committed by the Consolidation Staff by giving him lesser share on the front line abutting the road. Learned counsel has tried to pin point that old khasra number 24 was split up in such a manner which gave undue favour to the respondents No.2 to 4 thus they were able to get the lion's share in the front line ignoring the right of the petitioner who was a minor at that time and his interests were not properly watched. He further argued that the petitioner attained majority on December 15, 1997 and the consolidation proceedings were still on. However, on April 19, 2003, the respondents No. 2 to 4 had tried to grab the best portion of the land more than for which they were legally entitled in the front line, thus knowing about these malafides, the petitioner filed a petition under Section 54 of the Consolidation of Holdings Act seeking the fresh partition which request was declined. Learned counsel further tried to pin point from the tatima that injustice was done to the petitioner at the time of earlier partition and the Consolidation Officer also decided his petition contrary to law and facts. Therefore order Annexure-P3 in this petition was null and void. The petitioner had neither disclosed in this petition nor before any authority as to when the partition had taken place and who had represented the petitioner, what was the mode of partition? Whether the instrument was made in accordance with it? Even at this stage, we persistently quizzed

the learned counsel for the petitioner to spell out the facts which were not so stated to exercise our judicial wisdom in the matter but no answer came forward. Instead of answering the questions put to the learned counsel for the petitioner time and again, he took us again and again to the provisions of Section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 under which he had filed the appeal. The said section reads as under:

> "54. Power of the State Government to call for proceedings.- The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such orders in reference thereto as it thinks fit:
>
> Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration".

Thereafter, learned counsel for the petitioner took us to the impugned order Annexure-P3 passed on 17-11-2004 contending that the petitioner was entitled for more land according to his share whereas, he was allotted less and the Director, Consolidation of Holdings had given whimsical findings. Be it as it may. It is pertinent to note that even for the purpose of aforesaid section the order of previous partition or repartition is also required to be looked into.

We have thoughtfully gone through the record and tried to understand and appreciate the points put forth by the learned counsel for the petitioner but we were not able to agree with him for the reasons

that the shares of the parties are not disputed at all and the total land of old khasra number 24 was 7-15-5 bighas, which was later assigned Kh. Nos. 18, 19 min, 22, 23, and 25 min and total area remained the same. We have also made our calculations. We did not find that any injustice was done to the petitioner. Although detailed reasons have not been given in the order Annexure-P3, but our calculations are also the same as arrived at by the Director, Consolidation of Holdings. Thus, the petitioner cannot complain any injustice or disparity. Therefore, in these circumstances, we are unable to interfere with the partition which was already made more than a decade ago. Thus, there is no case for interference in the impugned orders. The petition is therefore dismissed with no order as to costs.

CMPs No. 614 and 2584 of 2005.

No order in view of the disposal of the main writ petition. The applications are disposed of.

(Deepak Gupta), J.

(Surinder Singh), J.

March 29, 2007
(BM)